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***Via Certified Mail -  
Return Receipt Requested***

October 22, 2020

Virgil Garner, Quality Control Manger  
Linda Engleman, Environmental Compliance  
Managing Agent  
Wylatti Enterprises, LLC  
GEO Aggregates Main Yard  
1221 N Main St.  
Fort Bragg, CA 95437-8473

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution  
Control Act (Clean Water Act)**

Dear Mr. Garner, Ms. Engleman, and Managing Agent

## **NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, ("CWA" or "the Act") that River Watch alleges are occurring at Geo Aggregates Main Yard (the "Facility") located at 1221 N Main Street in Fort Bragg, California. Notice is being sent to you as the responsible owners, operators, lessees and/or managers of the Facility and underlying real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Facility to the Pacific Ocean, a navigable water of the United States.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge complies with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System ("NPDES") permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the

issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). To discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and are in compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Facility. Consequently Wylatti Enterprises, LLC and GEO Aggregates Main Yard (the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the California Toxics Rule (“CTR”) and the North Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

**1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated**

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, (the General Permit) relating to services and operations taking place at the Facility including storm water disposal operations.

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) for the Facility agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on October 15, 2018 and assigned Waste Discharger Identification (“WDID”) number 1 23I027910 to the Facility.

River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing hard rock mining and quarrying operations taking place at the Facility, the Discharger, for the period from 2016 to the present, has failed and is failing to comply with the strict terms and conditions of the General Permit governing storm water discharges.

In addition to the alleged violations of the terms and conditions of the General Permit, River Watch alleges violations of discharge prohibitions contained in the RWQCB's Basin Plan, which are incorporated by reference as part of the compliance obligations imposed on the Facility under the General Permit.

## **2. The Activity Alleged to Constitute a Violation.**

Having agreed to its terms, the Discharger has a continuing burden to demonstrate compliance with each applicable provision of the General Permit. River Watch alleges the following actions and inactions as violations of the General Permit:

### **A. Failure to Develop and Implement an Adequate Site-specific Storm Water Pollution Prevention Plan (SWPPP)**

General Permit X.A provides, "Dischargers shall develop and implement a site-specific SWPPP for each industrial facility covered by this General Permit that shall contain the following elements, as described further in this Section:

1. Facility Name and Contact Information;
2. Site Map;
3. List of Industrial Materials;
4. Description of Potential Pollution Sources;
5. Assessment of Potential Pollutant Sources;
6. Minimum BMPs;
7. Advanced BMPs, if applicable;
8. Monitoring Implementation Plan;
9. Annual Comprehensive Facility Compliance Evaluation (Annual Evaluation); and,
10. Date that SWPPP was Initially Prepared and the Date of Each SWPPP Amendment, if Applicable."

The Discharger's SWPPP for the Facility filed with the SWRCB SMARTS database for the Facility as Attachment ID No. 2238102 (*SWPPP & BMPs, August, 2018*) is a mere 6 pages long and fails to provide sufficient information regarding a List of Industrial Materials, Description of Potential Pollution Sources, or Assessment of Potential Pollution Sources (Items 3-5 above). There are no specifically-titled sections of the SWPPP addressing those elements, as is common industry practice. The information provided on

Pages 4 and 5 of the SWPPP (*Structural BMPs, Non-Structural BMPs (Good Housekeeping), and Preventative Maintenance*) is far from the level of specificity required to describe and assess the industrial materials and pollutants sources at the Facility site.

The SWPPP fails to provide any description of the drainage system, topography and gradient of the Facility, or any description of erosion and sedimentation controls, all standard information by industry wide practice. The only information regarding the sampling locations is found on page 3 of the SWPPP under the heading of *Sampling Discharge Points*: "Samples will be collected from 3 locations where storm water is discharged (see site map). Samples will represent the quality and quantity of storm water discharges from the facility." It should also be noted that no site map has been made part of the SWPPP.

Without specific information regarding topography, gradient and drainage, there is no basis for the regulators or the public to discern whether the designated sampling locations are in fact representative of discharges from the Facility. The SWPPP for the Facility is generally lacking in the level of specific information required by the General Permit as applied to a ready-mix concrete facility.

**B. Failure to Sample for Facility-specific Parameters that Serve as Indicators of Industrial Pollutants**

Under the General Permit, a discharger is required to: analyze all collected samples for the following parameters: "(a) Total suspended solids (TSS) and oil and grease (O&G); (b) pH ...; (c) Additional parameters identified [by the Facility] on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment ..." (General Permit Section XI.B.6.a.-c.). While the Discharger's SWPPP lacks a designated pollutant source assessment, the SWPPP provides the following listing of parameters under *Analytical Parameters and Methods*, on page 4: Oil and Grease, Iron, PH, Nitrate & Nitrite Nitrogen, Specific Conductance, Total Suspended Solids and Total Organic Carbon. However, the Discharger's self-monitoring reports for the Facility only include sampling results for Iron, Oil & Grease and Total Suspended Solids.

**C. Failure to Provide Sampling Results for Discharges Resulting from Vehicles and Equipment**

The General Permit requires the Discharger to ensure that industrial storm water discharges do not: (1) cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water (General Permit VI.A.); (2) adversely affect human health or the environment (General Permit VI.B.); and, (3) do not contain pollutants in quantities that threaten to cause pollution or a public nuisance (General Permit III.C., VI.C.). The Discharger provides no evidence of complete compliance with these requirements for the Facility's transportation-related areas. The SWPPP includes the use

and operation of excavators, loaders and trucks in its industrial operations (*Preventative Maintenance*, pg. 5) and activities taking place at the Facility, but fails to test for copper or zinc which are known pollutants from tires, brake pads, fuels, and lubricants.

#### **D. Failure to Implement Effective Best Management Practices**

The General Permit requires the preparation, implementation, review, and update of an adequate SWPPP which must comply with the standards of Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT"). The General Permit requires dischargers to implement Best Management Practices ("BMPs") when necessary, to support attainment of water quality standards. The use of BMPs to control or abate the discharge of pollutants is authorized by 40 C.F.R. §122.44(k)(3) because numeric effluent limitations are infeasible, and implementation of BMPs is reasonably necessary to achieve effluent limitations and water quality standards, and to carry out the purposes and intent of the Act. (40 C.F.R. §122.44(k)(4).)

Compliance with the monitoring and reporting program and the requirement to implement effective BMPs is central to an efficacious General Permit program. The General Permit has required all non-exempt facilities to collect and accurately analyze samples from storm events, and implement effective BMPs detailed in the facilities' SWPPPs that are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

Discharges from the Facility site regularly contain iron at concentration levels substantially exceeding Numeric Action Limits (NAL), which adversely affect the Pacific Ocean via indirect discharge (see Facility NOI). There are also discharges of Total Suspended Solids (TSS) exceeding NALs. A review of the Discharger's Self-Monitoring Reports demonstrates discharges are occurring from the site to the Pacific Ocean exceeding EPA benchmarks and NALs for iron. River Watch, following review of documents on file with the SWRCB SMARTS reporting database, contends the Discharger has not fully developed and/or adequately implemented BMPs for operations at the Facility as evidenced by the fact that the Discharger has failed to reduce pollutants in storm water to below water quality objectives or standards.

The following analytical results for iron are documented in the Discharger's Self-Monitoring Reports submitted to the SMARTS database (Annual NAL for iron is 1 mg/L):

7.4 mg/L - 05/18/2020 – Sampling Location 2  
12 mg/L - 05/18/2020 – Sampling Location 3  
10 mg/L - 12/13/2019 – Sampling Location 1  
9.4 mg/L - 12/13/2019 – Sampling Location 2  
33 mg/L - 12/13/2019 – Sampling Location 3.

The following analytical results for TSS are documented in the Discharger's Self-Monitoring Reports submitted to the SMARTS database (Annual NAL for TSS is 100 mg/L):

110 mg/L - 12/13/19 – Sampling Location 1  
360 mg/L - 12/13/19 – Sampling Location 3  
140 mg/L - 05/18/20 – Sampling Location 3

#### **E. Failure to Monitor Ground Water Impacts from Facility Operations**

The General Permit provides in Section III.C. "Discharge Prohibitions" that [i]ndustrial storm water discharges and authorized NSWDS that contain pollutants that cause or threaten to cause pollution, *contamination, or nuisance as defined in section 13050 of the Water Code, are prohibited*" (emphasis added). Water Code § 13050 provides, in relevant part:

(e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(l) (1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

(B) Facilities which serve these beneficial uses.

(2) "Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes."

The above-identified pollutants present at the Facility qualify as pollution or as a public nuisance under Water Code § 13050 at concentrations that exceed NALs or other water quality objectives as defined under the Basin Plan. The language of Water Code §

13050 (e), incorporated into the General Permit under Section III.C., states clearly that groundwater is water of the State protected and under the Permit. River Watch, following review of documents on file with the SWRCB SMARTS reporting database, contends the Discharger has no ground water monitoring wells on the Facility site and therefore has failed to provide any evidence of compliance with discharge prohibitions mandated under General Permit Section III.C.

**F. Failure to Comply with Monitoring Requirements of the California Ocean Plan**

General Permit Section VIII.A. requires dischargers discharging to ocean waters “that are subject to the model monitoring provisions of the California Ocean Plan to develop and implement a monitoring plan in compliance with those provisions and any additional monitoring requirements established pursuant to Water Code section 13383.” As indicated in the Discharger’s NOI, the Pacific Ocean is the receiving water of the Discharger’s storm water discharges via indirect flow.

One example of a monitoring provision applicable to the Discharger’s Facility is found at Appendix III. 6. SEDIMENT MONITORING, “All Sources” [including storm water dischargers] must conduct sampling to address the following primary questions:

1. Is the dissolved sulfide concentration of waters in sediments significantly increased above that present under natural conditions?
2. Is the concentration of substances set forth in Table 3, for protection of marine aquatic life, in marine sediments at levels which would degrade the benthic community?
3. Is the concentration of organic pollutants in marine sediments at levels that would degrade the benthic community? (California Ocean Plan, Rev. 2019, pg. 85.)

River Watch, following review of documents on file with the SWRCB SMARTS reporting database, contends the Discharger has not conducted any receiving water monitoring to determine the Facility’s compliance with the California Ocean Plan, as required under General Permit Section VIII. A. The Discharger has been and will continue to be in violation of the Act every day it discharges storm water containing pollutants as identified in this Notice without adequately implementing its SWPPP and the BMPs required to be incorporated in that SWPPP.

River Watch contends that from October 10, 2015 to the present, the Discharger violated the CWA by discharging pollutants from the Facility to waters of the United States without an individual NPDES permit, and in violation of the General Permit. Further the Discharger has discharged storm water containing pollutants and non-storm water pollutants from the Facility site into the Pacific Ocean, in violation of the General Permit,

during at least every rain event over 1 inch as measured by the National Oceanographic and Atmospheric Administration. River Watch contends these violations are continuing.

**3. The Person or Persons Responsible for the Alleged Violation**

The entities responsible for the alleged violations identified in this Notice are Wylatti Enterprises, LLC and GEO Aggregates Main Yard, as well as those employees responsible for compliance with the General Permit.

**4. The Location of the Alleged Violation**

The location of the various violations of the CWA is the permanent address of the Facility at 1221 N Main Street, Fort Bragg, California.

**5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is October 10, 2015 through the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature, and therefore each day constitutes a violation.

**6. The Full Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving this Notice is California River Watch, an Internal Revenue Code §501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to the undersigned.

**REMEDIAL MEASURES REQUESTED**

River Watch believes that at a minimum, implementing the requirements of the General Permit as outlined in this Notice is necessary in order to bring the Facility into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.



## CONCLUSION


The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Facility is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Sincerely,



Jack Silver

**Service List**

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